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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 777

THE FIRST NATIONAL BANK IN PLANT CITY, FLORIDA, *Petitioner*

v.

FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA, ET AL.

No. 932

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, *Petitioner*

v.

FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA, ET AL.

Brief on Behalf of
The First National Bank of Cornelia, Georgia, et al.
As Amici Curiae
In Support of Petitioners

This brief, with the written consent of all respondents, is filed on behalf of the following twenty-two

national banks as Amici Curiae in support of the petitioners in the above-entitled cases:

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION
San Francisco, California 94120

CANAL NATIONAL BANK
188 Middle Street
Portland, Maine

CONTINENTAL NATIONAL BANK OF FORT WORTH
Houston at Seventh
P.O. Box 910
Fort Worth, Texas 76101

EXCHANGE NATIONAL BANK OF CHICAGO
130 South LaSalle Street
Chicago, Illinois 60690

FIRST AGRICULTURAL NATIONAL BANK OF BERKSHIRE COUNTY
City of Pittsfield, Massachusetts

FIRST NATIONAL BANK OF ARIZONA
411 North Central Avenue
Phoenix, Arizona

FIRST NATIONAL CITY BANK OF NEW YORK
55 Wall Street
New York, New York

FIRST SECURITY NATIONAL BANK OF BEAUMONT
505 Orleans Street
Beaumont, Texas 77704

FIRST UNION NATIONAL BANK OF NORTH CAROLINA
301 South Tryon Street
Charlotte, North Carolina

IDAHO FIRST NATIONAL BANK
205 North Tenth Street
Boise, Idaho 83707

MANUFACTURERS NATIONAL BANK OF DETROIT
151 West Fort Street
Detroit, Michigan 48226

National Bank of Detroit
611 Woodward Avenue
Detroit, Michigan 48232

North Carolina National Bank
200 South Tryon Street
Charlotte, North Carolina

Peoples First National Bank
Miami Shores, Florida

The Chase Manhattan Bank (National Association)
1 Chase Manhattan Plaza
New York, New York 10015

The First National Bank of Chicago
38 Dearborn Street, South
Chicago, Illinois

The First National Bank of Cornelia
119 South Main Street
Cornelia, Georgia

The Howard National Bank and Trust Company
111 Main Street
Burlington, Vermont 05401

The Indian Head National Bank of Nashua
146 Main Street
Nashua, New Hampshire 03060

The State National Bank of Connecticut
2834 Fairfield Avenue
Bridgeport, Connecticut 06605

Virginia National Bank
One Commercial Place
Norfolk, Virginia

Western Pennsylvania National Bank
435 Smithfield Street
Pittsburgh, Pennsylvania 15222

OPINIONS BELOW, JURISDICTION, QUESTION PRESENTED, STATUTES INVOLVED, STATEMENT OF THE CASE

The Amici Curiae agree with and adopt as their own the sections in petitioners' briefs on the merits entitled Opinions Below, Jurisdiction, Question Presented (as stated by the Solicitor General), Statutes Involved and Statement of the Case.

INTEREST OF AMICI CURIAE

All twenty-two Amici Curiae joining in this brief are national banks. Their home offices are located in seventeen states. Some operate branches—as many as 900 different offices—and some do not. All carry on activities which either already have been or could possibly be affected by the ruling in *Dickinson* or by a logical extension of that ruling by state officials, including State Banking Commissioners. In fact, as shown in our Argument below, state officials, relying on *Dickinson,* have already challenged national bank activities in several states in which some of the Amici banks are located. All of the Amici Curiae, therefore, have an immediate and direct interest in this Court's reversal of the Fifth Circuit's decision and judgment in that case.

The Amici Curiae originally filed a Motion for Leave to File a Brief in Support of the Petitions for Writs of Certiorari, and this Court granted the Motion on February 24, 1969. 37 U.S.L. Week 3308. The instant brief is filed with the consent of all respondents, as shown by letters on file with the Clerk.

ARGUMENT

An affirmance of the Fifth Circuit opinion by this Court would result in an extraordinary disparity of treatment of national banks by the various states and—just at a time when the public is demanding expanded bank facilities—a substantial reduction of services already in effect as well as a restriction on those services just now coming into being.

Both the disparity of treatment and reduction of services can easily be demonstrated by events which have already transpired in states other than Florida since this issue arose in the Fifth Circuit.

For example, the Attorney General of North Carolina, specifically citing *Dickinson,* recently ruled that loan production offices constitute branch banking within the North Carolina statute, even though these same offices had been specifically approved for member banks by the Federal Reserve Board only four months prior to his ruling. 33 F.R. 11812 (August 14, 1968). Using the example of an automobile dealer who relays the loan application information to the bank, which must then approve the loan, the Attorney General wrote the North Carolina Commissioner of Banks: "* * * it is my opinion that the automobile dealer is acting as the agent for the bank and the bank is in fact making a loan at the automobile dealer's place of business. In my opinion such course of dealing constitutes carrying on the business of banking at the automobile dealer's place of business and, therefore, would be an unauthorized engaging in the banking business at the location in question unless the bank was authorized to conduct a branch bank at such loca-

tion." Letter dated December 23, 1968, to Mr. Frank L. Harrelson, Commissioner of Banks.

Using this reasoning, even an independent armored car operation, such as Brinks, could be outlawed in some states under the *Dickinson* decision if it operated under contract with a bank, as of course it must if it is to transport the bank's funds.[1]

In fact, under the North Carolina interpretation, virtually *any* off-premises activities could be enjoined as unauthorized branching. The seriousness of such a development can be gauged by an examination of typical activities by a national bank in the state, Amicus North Carolina National Bank. That bank is part of the BankAmericard credit card operation; finances new cars through automobile dealers; solicits new businesses, loans, deposits and trust accounts away from its office, and engages in a number of correspondent bank activities. Similarly, Amicus The Union National Bank of North Carolina operates a charge card plan; sells data processing services, and carries on a courier service to pick up checks, clearing items and data processing work for correspondent banks in a several-state area and for non-bank customers who use the bank's data processing services for payroll, billing, and other record maintenance.[2]

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[1] By way of example, Amicus Manufacturers National Bank of Detroit uses Brinks, and Amicus The State National Bank of Connecticut uses Federal Armored Car Service of Bridgeport.

[2] Off-premises activities are not restricted to any one section of the country. Thus, Amicus Canal National Bank, Portland, Maine, engages in a number of such activities which might possibly come under the *Dickinson* rationale: money order sales through bank customers (savings banks and retailers); the use of Post Office lock box arrangements; procedures by which trust officers pick up securi-

The fact that outlawing all these activities is a very real possibility in some states under the *Dickinson* opinion is illustrated by a Georgia case which is now pending in the Fifth Circuit.

In *Jackson* v. *First National Bank of Cornelia, Georgia,* 292 F.Supp. 156 (N.D.Ga. 1968), the District Court relied entirely on the *Dickinson* opinion. The suit was filed by the Superintendent of Banks of the State of Georgia and a number of intervening state banks, seeking to enjoin the First National Bank of Cornelia, Georgia, from operating an armored car bank

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ties at the customer's residence or elsewhere when a trust is being established; the signing of loan agreements, contracts, and trust agreements in law offices and business offices; the use and activities of collectors (bank employees) for the bank's installment loan division, and all outside solicitations. In addition, the bank is considering the purchase and use of automatic deposit machines to be placed in strategic retail locations, and "inplant" banking, both of which have come under interdiction in other jurisdictions.

New York law provides:

> No bank or trust company or officer, director, agent or employee thereof, shall transact any part of its usual business of banking except * * * [at its principal office and authorized branches. N.Y. Bank. Law § 105(1).]

While the phrase, "usual business of banking," has not to our knowledge been interpreted by either the New York courts or the New York banking authorities, it is possible that any of the following activities normally carried on by many New York banks (in addition to offsite depositories and the armored car and messenger services involved in *Dickinson*) might be challenged if conducted by a bank at a non-branch location: loan solicitation and servicing (including the servicing of mortgage loans made by other banks or financial institutions), factoring, equipment leasing, mortgage warehousing, data processing, accounting and bookkeeping services, sale of travelers' checks and money orders and solicitation of bank credit card customers. In regard to the sale of travelers' checks by agents of a bank, see *Bank of America* v. *Lima,* 103 F. Supp. 916 (D. Mass. 1952).

messenger service in parts of Georgia and North Carolina. The complaint alleged that this service constituted illegal mobile branch banking under 12 U.S.C. §§ 24 (Seventh), 36(c), (f), and Title 13 of the Code of Georgia, § 201 *et seq.* The bank answered and counterclaimed for an injunction and declaratory judgment. The Comptroller of the Currency of the United States intervened as a defendant in support of the bank. Following a hearing, the District Court made findings of fact and permanently enjoined the bank from engaging in its armored car bank messenger service, even if the service is carried out under an agreement providing that the armored car messenger is the agent of the customer and not of the bank. On December 16, 1968, Mr. Justice Black stayed the District Court's order pending final disposition of the instant case. Similarly, the Fifth Circuit has deferred all further appeal proceedings in its own court in the *Bank of Cornelia* case until *Dickinson* has been resolved.

The District Court in *Bank of Cornelia* held that the purpose of 12 U.S.C. § 36(c) is to place national and state banks on a basis of "competitive equality," and that this "is accomplished by adopting, in full, the state branch banking law as federal law in the various states." 292 F. Supp. at 160. Branch banks are defined by Georgia law as "any additional place of business of any parent bank not located within the particular city * * * where its parent bank was chartered." Ga. Code § 13-201.1(b). Georgia law prohibits the establishment of any new or additional branch bank anywhere in the State after February 9, 1960. Ga. Code § 13-203(c). In addition, a parent bank in Georgia may operate only one additional bank office or

facility within the particular city where the parent bank is situated if that city has a population not exceeding 40,000. Ga. Code § 13-203.1. These provisions of the Georgia law were incorporated into "federal law" by the District Court, relying specifically upon *Dickinson*. 292 F. Supp. at 160, 161.

The District Court held that it must accept the position of the Georgia Superintendent of Banks, because "There is no decision of the Georgia Supreme Court contrary to this interpretation * * *." *Id.* at 161. Thus, the District Court concluded that the Bank of Cornelia's armored car bank messenger service was illegal because it constituted not only branch banking prohibited by Georgia law but also the carrying on of a banking business through banking facilities other than on the premises of the bank's place of business, also prohibited by Georgia law.

The effect of this decision, if allowed to stand by an affirmance in *Dickinson,* would be to bar for all time not only the armored car messenger services of national banks in Georgia but also the extension of services of such banks beyond the borders of their immediate cities. Further, the extent of the ruling is demonstrated by the response of the District Court to the following remarks of counsel made during oral argument:

> It's undisputed in the record here that Georgia banks can and do conduct many off-premises activities: officer call programs at a place of business to solicit loans and deposits; calls on new customers; trust representatives calling off-premises on potential or existing trust customers; participation in loan closings, again off-premises; visits to and assisting sometimes in the management with

> or of correspondent banks; foreign branches overseas conducted by both State and National Banks, or participation in corporations organized under the Edge Act to conduct foreign banks; credit cards. [Transcript of Sept. 26, 1968 hearing, pp. 12-13.]

The Court's response was that the Georgia Superintendent, under the *Dickinson* decision, could declare each of these activities by national banks to be illegal. *Id.* at 18. Thus, as demonstrated in North Carolina, *every* off-premises activity by a national bank (with the exception of foreign activities—see 12 U.S.C. § 36 (g)) is now subject to attack by state commissioners, if the *Dickinson* and *Bank of Cornelia* decisions become binding law. The chaos that may well result can hardly be overstated.

As a matter of fact, the impact of the *Bank of Cornelia* decision even on the communities served by the Bank's armored car service would be devastating. As shown by the District Court's findings, the Bank's three armored trucks make 1,415 different calls on 505 separate customers every week. 292 F. Supp. at 158. This service has been provided for more than two years. The trucks pick up cash and checks for the purpose of transporting them to the bank, carry small bills and coins for changing larger bills, transport cash to certain customers, and provide a payroll cashing service to a number of customers. Of the ten counties covered by this armored truck service, every one is located in Appalachia, recognized by the Government as one of the most destitute sections of the United States. The hundreds of businesses served by these trucks are almost exclusively small ones, and most are located in rural or mountain areas from five to twenty miles away

from the nearest town and the nearest bank. Thus, personal deliveries of money to and from the bank would be not only difficult but extremely hazardous if the customers had to undertake these deliveries themselves.

Just as is the case in *Dickinson,* the Bank of Cornelia's armored messenger service has been operated pursuant to a specific ruling by the Comptroller of the Currency of the United States to the effect that such a service is legal so long as an agreement between the bank and its customers specifies that the messenger is the agent of the customer (Comptroller's Manual, par. 7490). The District Court found that such agreements have been in effect between the bank and its customers. 292 F. Supp. at 158, 159. Nevertheless, the service was outlawed and permanently enjoined pursuant to the *Dickinson* ruling.

As in North Carolina, both the Banking Commissioner and the Attorney General of Illinois have recently ruled that certain off-premises activities of banks are prohibited by the Illinois Banking Act (as revised 1968), 16½ § 106.[3] Specifically, they have outlawed any mechanical devices, such as a "Lectro-Teller,"[4] which are located at places other than the

[3] This section provides: "No bank shall establish or maintain more than one banking house, or receive deposits or pay checks at any other place than such banking house, and no bank shall establish or maintain in this or any other state of the United States any branch bank, nor shall it establish or maintain in this State any branch office or additional office or agency for the purpose of conducting any of its business."

[4] The Lectro-Teller accepts currency in denominations from one to twenty dollars and coins, issues a printed receipt for the amount deposited, and in addition accepts items for collection such as checks. All of these items may be included in the same deposit.

principal office of the bank and in which checks and funds are placed by bank customers for delivery to the bank.[5] They held this type of machine illegal even though it "issues a receipt stating the bank assumes no liability until delivery is made to the bank by the owner of the machine."[6]

Yet in the contiguous state of Kentucky, precisely the opposite is true. The Kentucky Attorney General has ruled that although the operation of the Lectro-Teller by the bank itself would be illegal branch banking under state law (Ky. R. S. 287, 180), it is perfectly permissible to operate such machines through agents, such as an armored car company, so long as it appears "that the bank does not own or control the machine and assumes no liability whatever for the deposits made in such machine until such time as the Armored Car Service actually makes such deposit with the bank at its authorized place of business."[7]

The result is that a *national* bank, governed by *federal* law, which happens to be located on one side of

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[5] Commissioner's letters of September 26, 1968, and November 26, 1968, to all Illinois banks; Attorney General's letter to the Commissioner dated November 22, 1968 (File No. UP-2023).

[6] Letter of November 26, 1968, *supra* n. 5. Amicus First National Bank of Arizona has some fifty Lectro-Tellers distributed in supermarkets, drug stores and the enclosed malls of four regional shopping centers. In these same malls, it also has night-drop facilities. In both instances the facilities are operated by Atlas Services under contract with the bank, but if the North Carolina Attorney General's opinion were to be adopted elsewhere, the operator of a service could be deemed merely the agent of the bank, so that the service could be converted from an independent operation into branch banking. Yet "deposit machines" have been specifically authorized for national banks by par. 7491 of the Comptroller's Manual for National Banks.

[7] OAG 69-180, letter of March 31, 1969, from Attorney General Breckinridge to the Commissioner of Banking and Securities.

the Ohio River, can use as many Lectro-Teller machines as it wishes by the simple device of entering into an operational agreement with a third party, whereas another *national* bank on the other side of the river, governed by the *same* federal law, cannot use the machines at all, regardless of any agreements it may have with third parties. And this result comes about under the assumption that Congress, despite its definition of branch banking in the federal statute, actually intended to leave the interpretation of branch banking to the states, and the states in turn are free to rule that a stationary, unattended deposit machine is a "branch bank" in one instance but is not a "branch bank" in another. We say that Congress intended no such thing and in fact was fearful of just such a crazy-quilt, patchwork kind of treatment accorded federal banks by the states. In another context but with language especially applicable here, this Court has said that "only if federal law controls can the federal Act be given that uniform application throughout the country essential to effectuate its purposes." *Rice* v. *Akron, Canton & Youngstown R. R. Co.*, 342 U.S. 359, 361 (1952). The situation in Illinois and Kentucky in regard to electric machines amply demonstrates the logic of that statement and the vice of unequal treatment.[8] But there are many other examples of the identical vice.

In the same opinion in which they outlawed electric machines in Illinois, the state's Banking Commissioner

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[8] In Oklahoma, the Attorney General has filed suit attacking the use by national banks of Lectro-Teller machines, and the manufacturer of the machines has entered the case as an intervenor. *The First National Bank and Trust Co.* v. *Blankenship*, No. Civil 68-451, W.D. Okla. The District Court in that case has indicated that if the stay in *Dickinson* is vacated by this Court, a restraining order will be entered against the use of the Lectro-Teller machines.

and Attorney General also outlawed loan production offices, which they described as offices apart from the main bank where preliminaries for loans are conducted with prospective borrowers. This ruling was made even though "the finalization of loans so initiated occurs at the main bank * * *." In his September 26 letter (*supra* n. 5), the Commissioner specifically cited and relied on the Fifth Circuit's *Dickinson* decision. Similar loan production offices, where a car or appliance dealer processes a loan to a customer on behalf of the bank, are maintained by a number of the Amicus banks, including the Virginia National Bank.

In a letter dated December 21, 1959, the Attorney General of Michigan wrote the state's Banking Commissioner his opinion (No. 3464) that a mobile banking service, which moved from location to location in order better to service the bank's customers, was branch banking in violation of Michigan's requirement of a stationary banking operation. Opinions, Attorney General, Vol. 1, 1959-60, p. 238. On the other hand, a mutual savings bank in Pittsfield, Massachusetts—the City Savings Bank—has been given permission by the state Commissioner to operate just such a mobile bank.[9]

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[9] As mentioned above, a number of banks maintain data processing centers and administrative offices off premises. Many larger banks now do most of their data processing and paper work at administrative buildings which are not connected with a certified main office or branch. Customers may or may not visit these offices, depending on the bank. Thus, the national bank involved in *Wingate Corp.* v. *Industrial National Bank of Rhode Island*, 1st Cir., No. 7186 (decided March 27, 1969, solely on the issue of standing to sue), where plaintiff is challenging the right of a national bank to offer data processing services to other banks and bank customers, has established a $5 million underground, bomb-proof computer center in the suburbs of Providence, about ten miles from the bank's main office. Other illustrations are the

As to national credit cards, the Court can imagine the extraordinary confusion that would result if these operations were treated as branching under the various state statutes—prohibited entirely in some states and allowed under varying conditions in all the others.

Still another state that graphically illustrates the danger of the *Dickinson* rationale is Texas. Both the Texas Constitution (Art. XVI, § 16)[10] and a Texas statute (Texas Banking Code of 1943, as amended, Title 16, Art. 342-903) prohibit branch banking. The constitutional provision has been broadly interpreted in a thirty-eight page letter from the State Attorney General to the State Banking Board (August 18, 1952) as reaching many more activities than "technical branch banking" (p. 9). He ruled, for example, that "chain and group banking are just as violative of the Texas Constitution as branch banking" (p. 11), and that the constitutional provision "was intended to effectuate a State policy requiring that each banking corporation operate as an independent unit" (p. 36).[11]

Bank of America, located in California, which for years maintained representative offices in New York, Chicago, and Washington, D.C., and Riggs National Bank of Washington, D.C., which once maintained its entire trust department in a separate building. Even more importantly, virtually all money-center banks now have officers whose primary function is to travel and solicit new business, or service existing business, from major national corporations.

[10] "Such body corporate [with banking and discounting privileges] shall not be authorized to engage in business at more than one place which shall be designated in its charter."

[11] This ruling is squarely contrary to the holding of the federal courts that chain banking is not impermissible branching insofar as national banks are concerned. *First National Bank in Billings v. First Bank Stock Corp.*, 306 F. 2d 937 (9th Cir. 1962); *Camden Trust Co. v. Gidney*, 112 U.S. App. D.C. 197, 301 F. 2d 521, *cert. denied*, 369 U.S. 886 (1962).

Therefore, it violated the Constitution for one bank to organize separate corporate bodies and then dominate or control them "to the extent of indirectly engaging in banking business through another ostensibly independent bank" (p. 36).[12] When this interpretation is correlated with the *Dickinson* decision, it is clear that a state Banking Commissioner could, by departmental order as distinguished from legislative fiat, prohibit a registered bank holding company from owning interests in more than one bank. This would defeat the Congressional intent and seriously jeopardize the authority of federal control over registered bank holding companies.

The disparity in treatment that could ensue is also illustrated by the fact that while local commissions interpret state laws in Florida and Georgia as prohibiting the operation of armored car services by banks, California law *compels* the use of such services to and from certain depositors.

Thus, Section 53739 of the California Government Code reads: "*Expense of Transporting Money.* The depositary shall bear the expenses of transportation of money to and from the depository." Section 53630 (b) provides: "(b) 'Depository' means bank in which the moneys of a local agency are deposited." And Section 53630(a) reads: "(a) 'Local agency' means county, city, municipality, or other public or municipal corporation." Under these sections, it becomes mandatory for banks to provide armored car service for the trans-

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[12] See also the letter from the Attorney General of Texas to the state Banking Commissioner (Opinion No. WW-159) dated July 3, 1957, and *Texas ex rel. Falkner* v. *National Bank of Commerce*, 290 F. 2d 229 (5th Cir.), *cert. denied*, 368 U.S. 832 (1961).

portation of money to and from the offices of the local agencies defined in the statute.[13]

These various rulings at the state level demonstrate a number of facts relevant to an interpretation of the federal statute. One is the extraordinary variance in treatment that national banks will face if the Fifth Circuit's opinion is affirmed—a variance perhaps best illustrated above by some states attempting to prohibit what the State of California specifically requires. Another fact, evidenced by the swiftness with which many state officials have moved to cut off a number of vital banking services, is that the national banks will literally be at the mercy of the states if *Dickinson* becomes binding federal law, with a concomitant loss of service and facilities to customers across the country. And still another fact is that the national banks would not necessarily be protected even by state statutes or judicial state court interpretations, for *Bank of Cornelia* shows how federal courts would feel themselves bound, in the absence of specific state court rulings, by the decisions of a single state administrative official. This kind of power in the hands of state officeholders could not conceivably have been the intent of Congress in fashioning a federal statute to govern national banks.

It must be emphasized in this regard that even disregarding the varying interpretations of branch banking that have been or may be rendered by state officials, the fact is that state statutes themselves vary drastically in their treatment of the subject. As pointed out above, some states, like Florida, Georgia, Texas

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[13] Amicus Bank of America National Trust and Savings Association, pursuant to these sections, regularly provides armored car messenger service to and from these local agencies.

and Illinois, prohibit branch banking altogether. Others allow branches but have disparate requirements in establishing a branch.

For example, Connecticut allows branches, with the approval of the state Commissioner, to be operated by a bank (with a combined capital and surplus of at least $1,000,000) within the same town as the main office or within other towns where no state or national banks are located, assuming a number of conditions are met. Conn. Gen. Stat. (as amended), §§ 36-59. Michigan allows branches generally within the same city as the main office or within a city or village in the same or contiguous county not more than twenty-five miles from the principal office. *Compiled Laws of Mich. of 1948* (as amended), §§ 487.34, 487.34a, 487.34b. New Hampshire allows branches to be established by a bank (with no restrictions on the amount of capital), after a public hearing, in the same town as the principal office, in any contiguous town with no other banks, and in any non-contiguous town within fifteen miles of the principal office if no other bank is within ten miles of the proposed branch. N.H. Stat. §§ 384-8.1, 384.B:2.

The Code of Vermont, on the other hand, allows a bank, with no restriction on capital, to establish branches after a public hearing if the branches will "promote the general good of the state," so long as they do not have certain anti-competitive effects, harm depositors, etc. Vt. Code Title 8, §§ 501-601a. The Massachusetts statute limits branches to a single county. Mass. Gen. Laws, Ch. 172 § 11.

The number of branches operated by any one bank—and therefore the complexity of the problem—also vary widely from bank to bank. Among the Amicus banks,

for example, First Union National Bank of North Carolina has 117 offices in fifty-eight communities in North Carolina; National Bank of Detroit operates 100 banking offices, including one in London, England; The State National Bank of Connecticut has thirty-four full-service offices located in twenty-one communities and a Computer Center housed in a branch in Fairfield; Howard National Bank and Trust Company has thirteen banking offices in Vermont; Indian Head National Bank has one main office and two branches, all in New Hampshire; whereas Continental National Bank of Fort Worth and First Security National Bank of Beaumont each has only one office. Most banks serve only one state, but Exchange National Bank of Chicago, by way of example, operates four offices that cover six states, so that the laws of *each* state as to what constitutes branch banking would come into play.

The Amicus banks stress to the Court that these varying activities, practices, statutes and interpretations spell nothing but trouble in the administration of federal banking laws throughout the country. As pointed out by the Solicitor General in his Petition for a Writ of Certiorari (p. 12), "It is inconceivable that, without expressly so providing, Congress could have intended that the lawfulness of all these functions [performed by banks] turn on state definitions of 'branch'."

It was well settled, at least until the *Dickinson* opinion, that the National Bank Act constituted "* * * by itself a complete system for the establishment and government of national banks * * *." *Cook County National Bank* v. *United States,* 107 U.S. 445, 448 (1883). Thus, the determination of what is a "rat-

able" distribution of the assets of an insolvent national bank under 12 U.S.C. § 194 is "one of federal law." *American Surety Co.* v. *Bethlehem National Bank,* 314 U.S. 314, 316 (1941); see also *D'Oench, Durme & Co., Inc.* v. *FDIC,* 315 U.S. 447 (1942). And in *Downey* v. *City of Yonkers,* 106 F. 2d 69, 73 (2d Cir. 1939), *aff'd,* 309 U.S. 590 (1940), the court held: "It is well settled that the distribution of assets of an insolvent national bank is governed by federal law and that state laws which attempt to create preferences which arise at the time of insolvency are to be disregarded." When a policy is involved upon which Congress has legislated, the validity of a note given to a national bank to purchase stock, "* * * though left by the statute to judicial determination * * * involves decision of a federal, not a state question." *Deitrick* v. *Greaney,* 309 U.S. 190, 201 (1940). Of particular significance is Judge Learned Hand's opinion for the Court in *FDIC* v. *Tremaine,* 133 F. 2d 827 (2d Cir. 1943). The opinion states that in 1930,

> * * * avowedly in order to enable national banks to compete with state banks for the deposit of the "public money" of the states in which they did business—§ 90 was amended by providing that a national bank might also, "upon the deposit with it of public money of a State or any political subdivision thereof, give security * * * of the same kind as is authorized by the law of the State * * * in the case of other banking institutions in the State. [133 F.2d at 828-829.]

Notwithstanding that the statute involved was enacted "* * * to enable national banks to compete with state banks * * *," and notwithstanding that the question

was what constituted "public money" of a state or political subdivision thereof, the court held that:

> that phrase was to be determined as a federal question: i.e., that Congress did not mean to make it dependent upon whether the deposits secured were deemed "public money" according to the law of the State where the security was given. [133 F.2d at 829.]

These cases involving the National Bank Act are merely applying familiar doctrine that "* * * a federal statute may not be set at naught, or its benefits denied, by state statutes or common law rules." *Sola Electric Co.* v. *Jefferson Electric Co.,* 317 U.S. 173, 176, (1942). National banking is an area "* * * within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law." *Id.* at 176. In short, words appearing in a federal statute, whether or not having a fixed meaning under state law, must be interpreted according to federal law. *New York* v. *Feiring,* 313 U.S. 283, 285 (1941). *Dickinson* held otherwise.[14]

The Amici Curiae national banks fully agree with and adopt as their own the arguments of petitioners

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[14] It should be noted that the Fifth Circuit decision went off on a matter hardly discussed in argument. Both parties and the court, prior to the decision, treated the case as one involving the question whether armored car messengers received "deposits" within the meaning of § 36(f) of the federal Act. In fact, the reply brief of the Florida Commissioner stated that "* * * the basic decisions regarding branching, *including the definition thereof,* were made by Congress in the 1927 McFadden Act" (p. 15; emphasis in original).

relating to the legislative history of the national banking laws, judicial precedents in addition to those cited above, and all of the reasons why branch banking must have been federally defined and thus federally imposed on the states. But the facts cited in this brief show in addition that if national banks are to continue to serve the public, they cannot be left to the vagaries—and restrictions—of state interpretation.

We respectfully urge the Court to reverse the Fifth Circuit judgment and restore the orderly administration of the federal banking laws.

Respectfully submitted,

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